

Assessee's bank account cannot be blocked without complying the provisions embedded u/s 83 of the CGST Act

The Hon'ble High Court, New Delhi in the matter of *M/s Zuric Traders v The Commissioner, Customs and Central Excise, Delhi and Anr [W.P.(C) 13911/2021 dated July 15, 2022]* quashed the letter issued by the Revenue department for blocking assessee's bank account as it does not comply with the perquisites embedded under Section 83 of the Central Goods and Services Tax Act 2017 ("**the CGST Act**").

Facts:

A Letter dated February 25,2020 ("**the Letter**") was issued by the Revenue department ("**the Respondent**") to the IndusInd Bank, Punjabi Bagh Branch, New Delhi to block the bank account of the M/s Zuric Traders ("**the Petitioner**"). Being aggrieved by the Letter, the Petitioner has filed the present writ petition to direct the Respondent for unblocking the bank account. In this regard the Hon'ble High Court issued the notice to the Respondent, to file a counter affidavit.

Petitioner's contention:

- There is no reference to Section 83 of the CGST Act. The Letter was never served to the Petitioner. The Petitioner obtained the knowledge only when the bank account has been blocked.
- Submitted that, if the Section 83 of the CGST Act had been mentioned in the communication, the right of the Petitioner to file objections would have been triggered under Rule 159(5) of the Central Goods and Services Tax Rules, 2017 ("**the CGST Rules**").
- Hence, the action taken by the Respondent is violative not only of the provisions of Section 83 of the CGST Act, but also Rule 159(5) the CGST Rules.

Respondent's contention:

- The Letter has been issued in exercise of power conferred under Section 83 of the CGST Act.
- By virtue of the orders passed by the Supreme Court in ***Cognizance for Extension of Limitation [Suo Motu Writ Petition (C) No.3/2020 dated March 23, 2022]***, the time frame prescribed under Section 83 of the CGST Act stands extended and that the department would have the benefit of period prescribed in Section 83 of the CGST Act.
- Inward supplies had been made to the Petitioner, the investigation has shown that the foreign currency remittances have not been received against the exports made by the Petitioner for which the Integrated Goods and Services Tax ("**IGST**") refund was credited to the account of the Petitioner. Hence the Respondent have to make the recovery of the IGST refund availed by the Petitioner.

Issues:

- Whether the Letter issued, was in reference to Section 83 of the CGST Act?
- Whether the time frame conferred in Section 83 of the CGST Act be extended by the virtue of orders passed by the Supreme Court in ***Cognizance for Extension of Limitation [Suo Motu Writ Petition (C) No.3/2020 dated March 23, 2022]***?
- Whether the refund of the IGST was wrongly availed by the Petitioner?

Held:

The Hon'ble High Court, New Delhi in ***[W.P.(C) 13911/2021 dated July 15, 2022]*** has held as under:

- The Letter does not advert to Section 83 of the CGST Act and the Petitioner would have been entitled to trigger the provisions of Rule 159 (5) of the CGST Rules i.e., to file objections against the Letter purported “blocking” of the bank account.
- Further that, the expression used in Section 83 is “provisional attachment” and not “blocking”; with the former having a definitive connotation in law, as its use requires fulfilment of certain pre-requisites.
- Opined that, the blocking order does not comply with the jurisdictional pre-requisites which are embedded in Section 83 of the CGST Act.
- The Letter is thus, quashed.
- Stated that Section 83 of CGST Act, provides a time frame i.e. statutory space for enabling investigation, to protect the interest of the revenue and not a period of limitation.
- Lastly, that the foreign remittances against the export made by the Petitioner have not been received, has never been put to the Petitioner and no record to show that this aspect was put to the petitioner
- Directed the Respondent to communicate the bank regarding unblocking the Petitioner’s account.

Relevant Provision:

Section 83 of the CGST Act:

(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

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